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HARRISBURG, PA

JAN 02 2003

MARY E. D'ANDREA, CLERK  
Per 978

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

DARRYL L. JONES,	:	
Petitioner	:	No. 1:CV-00-2183
	:	(Judge Rambo)
v.	:	(Magistrate Judge Smyser) ✓
	:	
FRANK D. GILLIS, et al.,	:	
Respondents	:	

**ANSWER TO PETITION FOR WRIT OF HABEAS CORPUS**

TO THE HONORABLE J. ANDREW SMYSER, UNITED STATES MAGISTRATE  
JUDGE:

AND NOW, comes Edward M. Marsico, Jr., Dauphin County  
District Attorney, by James P. Barker, Deputy District Attorney,  
who files this Answer to Petition for Writ of Habeas Corpus, and  
in support thereof avers as follows:

1. On September 17, 1998, a jury sitting in the Dauphin  
County Court of Common Pleas found the Petitioner, Darryl L.  
Jones, guilty of Theft by Deception, Criminal Attempt (Theft by

Deception), and Forgery (three counts), in violation of 18 Pa. Cons. Stat. Ann. §§ 3922, 901, and 4101, respectively.

2. On the same date, the Honorable Richard A. Lewis imposed an aggregate sentence of incarceration for forty-five (45) to one hundred eighty (180) months, fines of \$1,700, and the costs of prosecution.

3. A Motion for Modification of Sentence was denied on September 24, 1998.

4. On direct appeal to the Superior Court of Pennsylvania, Jones raised the following issues:

1. WHETHER THE TRIAL COURT ABUSED DISCRETION BY SENTENCING MR. JONES IN THE AGGRAVATED RANGE OF THE SENTENCING GUIDELINES, AND BY IMPOSING A NUMBER OF CONSECUTIVE SENTENCES FOR AN AGGREGATE SENTENCE OF FORTY-FIVE (45) MONTHS TO ONE HUNDRED EIGHTY (180) MONTHS?

2. WHETHER THE TRIAL COURT ERRED BY FAILING TO SUPPRESS EVIDENCE OBTAINED AGAINST THE DEFENDANT WHILE HE WAS DETAINED, SEARCHED AND QUESTIONED?

Brief for Appellant on direct appeal to the Superior Court at 11.

5. On August 26, 1999, the Superior Court of Pennsylvania affirmed the judgment of sentence.

6. Jones did not file a petition for allowance of appeal to the Supreme Court of Pennsylvania.

7. On October 8, 1999, Jones filed an Application to File Petition for Allowance of Appeal Nunc Pro Tunc, which was denied on February 7, 2000.

8. On December 15, 2000, Jones filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254.

9. On March 9, 2001, the Honorable J. Andrew Smyser, United States Magistrate Judge, issued a Report and Recommendation that recommended granting Respondents' Motion to Dismiss the Petition.

10. On April 2, 2001, the Honorable Sylvia H. Rambo adopted the Report and Recommendation and dismissed the Petition.

11. On November 27, 2002, Judge Rambo granted Jones' post-judgment motion, found that the Petition was timely, reinstated the Petition for Writ of Habeas Corpus, and directed an Answer on the merits.

12. Jones raises the following claims as grounds for relief:

Ground One: Denial of due process and equal protection in the failure to suppress illegally seized evidence.

Ground Two: Denial of due process and equal protection by imposing an illegal sentence.

Ground Three: Denial of due process, equal protection, and effective assistance of trial counsel by failing to preserve and appeal the issue of the sufficiency of the evidence supporting the conviction.

Ground Four: Denial of due process, equal protection, and effective assistance of counsel on direct appeal by failing to preserve and appeal the issue of the sufficiency of the evidence supporting the conviction.

Ground Five: Denial of due process, equal protection, and effective assistance of counsel on direct appeal by

failing to include in the appellate brief the issue of the sufficiency of the evidence supporting the conviction.

Ground Six: Denial of due process, equal protection, and effective assistance of counsel on direct appeal by failing to file a petition for allowance of appeal raising Grounds One, through Five, inclusive.

Ground Seven: Same as Ground Six.

Ground Eight: Same as Grounds Six and Seven.

Petition for Writ of Habeas Corpus at 2-3 (paraphrased for brevity).

13. Because no claim was presented to the Supreme Court of Pennsylvania in a petition for allowance of appeal and the time for doing so has expired, Jones has procedurally defaulted all of his claims.

14. If this Honorable Court should decide to review Jones' claims, each of those claims fails because the adjudication of no claim resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, or in a decision that was based on an unreasonable application of the facts in light of the evidence presented in state court.

15. Respondents respectfully submit herewith copies of the following parts of the trial court record:

Exhibit A: Notes of Testimony of Suppression Hearing, Jury Trial, and Sentencing dated September 16-17, 1998.

Exhibit B: Omnibus Pretrial Motion, including Motion to Suppress Evidence, filed by Jones on May 26, 1998.

Exhibit C: Petition for Modification of Sentence filed by Jones on September 18, 1998.

Exhibit D: Memorandum Opinion of the trial court filed February 4, 1999.

Exhibit E: Brief for Appellant in the Superior Court of Pennsylvania filed by Jones on January 19, 1999.

Exhibit F: Memorandum Opinion and Judgment of the Superior Court of Pennsylvania filed August 26, 1999.

WHEREFORE, Respondents respectfully request that this Honorable Court enter an Order denying the Petition for Writ of Habeas Corpus.

Respectfully submitted,

A handwritten signature in black ink that reads "James P. Barker". The signature is written in a cursive, flowing style.

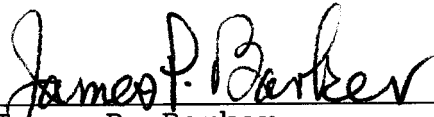
James P. Barker  
Deputy District Attorney

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DARRYL L. JONES,	:	
Petitioner	:	No. 1:CV-00-2183
	:	(Judge Rambo)
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v.	:	
	:	
FRANK D. GILLIS, et al.,	:	
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CERTIFICATE OF SERVICE

This is to certify that a copy of the Respondents' Answer to Petition for Writ of Habeas Corpus in the above-captioned matter was sent, on the below stated date, to the Petitioner, Darryl L. Jones, DT-3384, at the State Correctional Institution at Coal Township, 1 Kelley Drive, Shamokin, Pennsylvania 17872

  
James P. Barker  
Deputy District Attorney  
Dauphin County Court House  
Front and Market Streets  
Harrisburg, Pennsylvania 17101  
(717) 780-6767  
Attorney for Respondents

Dated: January 2, 2003